(1)

91-1963

Supreme Court, U.S.
FILED
JUN 4 1992
OFFICE OF THE CLERK

No. 91-752

IN THE

Supreme Court of the United States

October Term, 1992

JAMES R. DADE, MONTYNE H. DADE and CIDNEY C. DADE,

Petitioners,

vs.

JOSEPH A. CANNATELLA, JR., CHARLES EDWIN CANNATELLA, DARLENE LASUZZO CANNATELLA and PAUL H. DAVIDSON,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

CIDNEY C. DADE
Lead Petitioner Pro Se
1570 Roy Drive
Arnold, MO 63010
(314) 296-1249

JAMES R. DADE
1012 Benton Road
Bossier City, LA
71111
(318) 742-1775

MONTYNE H. DADE
1012 Benton Road
Bossier City, LA
71111
(318) 742-1775

Petitioners Pro Se

Questions Presented For Review

1) Is it anticipated that petitioners will respectfully accept the opinions of federal judges who refuse to review the proof offered to verify the truthfulness of petitioners' claims and whose opinions are framed to distort the facts and shroud in secrecy the reality of thieves and tyrants operating out of the U. S. Bankruptcy Court in Shreveport, Louisiana?

2) Isn't it time to modify the judgment in Sparf & Hansen v. U. S., the 1894 case in which the Supreme Court usurped from the American people the power of the jury, thereby repudiating the peoples' constitutional right and power to govern themselves and emasculating their constitutional protection against tyrants who can victimize them at will as long as judges condone political decisions by despotic totalitarians who operate above the law and claim immunity tantamount to the divine right of kings?

List of Parties

JAMES R. DADE AND HIS WIFE, MONTYNE H. DADE,
AND CIDNEY C. DADE
Plaintiffs/Appellants

v.

JOSEPH A. CANNATELLA, JR., ATTORNEY AT LAW,
CHARLES EDWIN CANNATELLA AND HIS WIFE,
DARLENE LASUZZO CANNATELLA, AND
PAUL H. DAVIDSON, CHAPTER 13 TRUSTEE

Defendants/Appellees

Tables of Contents and Authorities

Pursuant to Supreme Court Rule 14.1(c), no table of contents or table of authorities is included herein because the petition does not exceed five pages.

Reference to Opinions Delivered

A fourth opinion has been rendered: the Fifth Circuit Court of Appeals has disavowed jurisdiction and dismissed the appeal on grounds that the USDC for the Western District of Louisiana did not adjudicate all the claims of all the parties as required by Rule 54(b) of the FRCP.

Grounds for Jurisdiction of this Court

a) The appeal was dismissed by the Fifth Circuit on March 27, 1992.

b) No order for a hearing or extension of time to file this Petition for a Writ of Certiorari has been requested.

c) Jurisdiction was initially granted under Supreme Court Rule 11 and 28 U.S.C. §2101(e) as a case pending in the Fifth

Circuit; because petitioners have now been unsuccessful per curiam in both courts, they believe the certiorari jurisdiction of the Supreme Court should rest on 28 U.S.C. 1254(1) following the rendition of judgments and also on 28 U.S.C. 1254(5) as a public interest case that might best be decided by the court of last resort.

Constitutional Provisions Involved

a) Due to dismissal of petitioners' complaint in both the USDC and the 5th Circuit Court of Appeals, petitioners have been denied their right to a jury trial in a civil cause as protected by the Seventh Amendment, U. S. Constitution (App Pg A-6).

b) Sovereignty of the American people was bastardized in 1894 when the Supreme Court in the case of Sparf & Hansen v. United States, 156 U.S. 51-183, disenfranchised the power of the American jury and the sovereignty of the American people by citing English law as an excuse for substituting

and inflicting on the American people the fictitious sovereignty of the English people, the charade of powerless English juries and the philosophy and practice of English judges that law is the supreme power in a nation of laws which gave judges free rein to promote the interests of political power and preservation of the ruling class.

In his book Inventing the People, Edmund S. Morgan contends that sovereignty of the people in England and America is fiction. Unfortunately, this has been true since 1894. It has always been true in England which is a monarchy with hereditary regal power vested in a king or queen. However, the last member of English royalty to claim the divine right of kings was Charles I who succeeded to the throne in 1625 and got his head chopped off in 1640.

The U. S. is a republic. In order to

preserve the right and power of the American people to govern themselves and protect themselves from governmental tyranny, the Founding Fathers established in the Constitution of this republic the power of the jury. In his book With Justice For None, renowned lawyer Gerry Spence quotes Thomas Jefferson's description of the jury as "the only anchor ever yet imagined by man by which a government can be held to the principles of its constitution."

Statement of the Case

Copy of Form Letter MDT-1 dated April 20, 1992 from the Clerk of the 5th Circuit to the Clerk of the USDC for the Western District of Louisiana was received by petitioners; it stated that a certified copy of a judgment was being sent to the clerk only along with a copy of the court's opinion and the original record on appeal.

Amplification of Reasons for Allowing the Writ

Petitioners believe this is a case

which the United States Supreme Court should accept as a precedential opportunity to overturn the blatant piracy in Sparf & Hansen and restore the sovereignty of the American people and their constitutional protection against governmental tyranny so they can again honor the integrity, stability and expectation of justice inherent in the Constitution of the United States.

Respectfully submitted,

PETITIONERS AND
JOINT PLAINTIFFS/APPELLANTS PRO SE:

James R. Dade
James R. Dade

Montyne H. Dade
Montyne H. Dade

Cidney C. Dade
Cidney C. Dade

A P P E N D I X

UNITED STATES COURT OF APPEALS
For the Fifth Circuit

No. 91-4476
Summary Calendar

JAMES R. DADE, MONTYNE H. DADE,
and CIDNEY C. DADE

Plaintiffs-Appellants,

Versus

JOSEPH A. CANNATELLA, JR., CHARLES EDWIN CANNATELLA, DARLENE LASUZZO CANNATELLA and PAUL H. DAVIDSON, Trustee,

Defendants-Appellees.

Appeal from the United States District Court
For the Western District of Louisiana
(91-CV-192)

(March 27, 1992)

Before JOLLY, DAVIS and SMITH, Circuit Judges.

PER CURIAM:*

Plaintiffs, James R. Dade, his wife Montyne H. Dade (the Dades) and his uncle,

*Local Rule 47.5 provides: "The publication of opinions that have no precedential value and merely decide particular cases on the basis of well-settled principles of law imposes needless expense on the public and burdens on the legal profession." Pursuant to that Rule, the Court has determined that this opinion should not be published.

Cidney C. Dade (Uncle Cid), sued Paul H. Davidson, a bankruptcy trustee, Joseph A. Cannatella, Jr., Charles Edwin Cannatella and Darlene Lasuzzo Cannatella. The exact nature of the suit is unclear, but it stems from the sale of the Dades' home during bankruptcy proceedings. Joseph Cannatella was the Dades' attorney and Charles Cannatella - brother of Joseph Cannatella - and his wife Darlene purchased the Dades' home on July 1, 1988. The gist of the complaint is that the Dades were swindled by the Cannatellas acting in collusion with Davidson.

Davidson submitted a motion to dismiss. The magistrate judge recommended that the claims against Davidson be dismissed on the grounds that he is entitled to judicial immunity for his actions as a bankruptcy trustee. The magistrate judge also recommended that all of Uncle Cid's claims be dismissed for lack of capacity. The magistrate judge issued his recommenda-

tion on March 28, 1991.

The Cannatellas filed a motion to dismiss on May 6, 1991, which was set for hearing before the magistrate judge on June 10, 1991. In the meantime, the district court granted Davidson's motion to dismiss on May 20, 1991. On May 31, 1991, the Dades and Uncle Cid filed a notice of appeal from the district court's order dismissing Davidson. This was several days prior to the hearing scheduled for the Cannatellas' motion to dismiss.

The district court's order entered judgment only as to the Dades' claims against Davidson, the bankruptcy trustee, and the claims of Uncle Cid. It appears that the claims of the Dades against the Cannatellas still remain to be disposed of by the district court. In his letter of August 27, 1991, counsel for the Cannatellas represents that all claims have been dismissed. The docket entry for May 20,

1991, shows that this case has been closed, but the judgment itself does not reflect such a broad action. Davidson's motion to dismiss was granted, but the motion did not address the claims against the Cannatellas. It would appear that this action has not been terminated and the district court's order is subject to revision under Fed. R. Civ. P. 54(b).

This Court must examine the basis of its jurisdiction, on its own motion, if necessary. Mosley v. Cozby, 813 F.2d 659, 660 (5th Cir. 1987). While the district court may have thought it was dismissing all of the claims, the order of May 20, 1991, does not adjudicate all of the claims of all the parties as required by Rule 54(b). Therefore, this Court does not have jurisdiction to hear this appeal. See Budinich v. Becton Dickinson & Co., 486 U.S. 196, 199, 108 S. Ct. 1717, 100 L.Ed. 2d 178 (1988); 28 U.S.C. §§ 1291, 1292.

Additionally, the district court has not certified (pursuant to Rule 54(b)) that an appeal could be taken as to those claims that had been dismissed. See Kelly v. Lee's Old Fashioned Hamburgers, 908 F.2d 1218, 1219-20 (5th Cir. 1990) (en banc); Thompson v. Betts, 754 F.2d 1243, 1245-46 (5th Cir. 1985).

The appeal is therefore

D I S M I S S E D.**

**Having no jurisdiction, the Motion for Endorsement of Plaintiffs/Appellants' Demand for Trial by Jury is also dismissed.

A P P E N D I X

AMENDMENT VII, U. S. CONSTITUTION [1791]

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by jury, shall be otherwise re-examined in any Court of the United States, than according to the rules of the common law.